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No. 93-388

In the Supreme Court of the United States

OCTOBER TERM, 1993

PENNSYLVANIA OFFICE OF THE BUDGET, PETITIONER

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether Section 203(a) of the Intergovernmental Cooperation Act, 31 U.S.C. 6503(a) (1988), prior to its amendment in 1990, permitted the federal government to hold the Commonwealth of Pennsylvania accountable for interest earned on federal grant funds transferred to the Commonwealth and held by it in self-insurance reserve accounts.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-24a) is reported at 996 F.2d 1505. The opinion of the district court (Pet. App. 27a-43a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 11, 1993. The court of appeals denied a petition for rehearing on July 9, 1993. Pet. App. 44a-45a. The petition for a writ of certiorari was filed on September 9, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Numerous federal programs administered by the States reimburse participating States for the reasonable administrative costs they incur. Among the administrative expenses eligible for reimbursement are the salary expenses of certain state employees and their benefit programs, such as workers' compensation and medical care coverage. As a cost-saving measure, Pennsylvania (like a number of States) decided to self-insure with respect to state employee benefits, rather than purchase coverage on the commercial insurance market. In exercising its broad responsibilities for overseeing federal grant program administration, the Department of Health and Human Services (HHS) approved and agreed to contribute to petitioner's three self-insurance reserve accounts. Pet. App. 28a.

Pennsylvania "routinely invested portions of the self-insurance reserves, including the federal funds, in various interest bearing securities. These investments resulted in increased revenues which [petitioner] neither reinvested in the self-insurance account, nor refunded to the federal government." Pet. App. 29a.

When audits conducted by HHS's Office of the Inspector General challenged Pennsylvania's failure to credit the insurance reserve accounts with interest for the period from July 1, 1983 to June 30, 1985, Pennsylvania did not appeal and agreed to take corrective measures. See Pet. App. 29a & n.3. An audit for fiscal years 1986 through 1989 subsequently disclosed that the Commonwealth "again had failed to credit the federal government with its share of interest earned." *Id.* at 29a. HHS deducted the

interest earnings from petitioner's "allowable costs." *Ibid.*

2. After HHS's Regional Director upheld the audit results, Pennsylvania appealed to the HHS Departmental Appeals Board (DAB) and argued for the first time that the former Section 203(a) of the Intergovernmental Cooperation Act of 1968 (ICA), 31 U.S.C. 6503(a) (1988), barred disallowance of the costs associated with the failure to credit the interest earned on the self-insurance reserves.[1] The DAB held that Section 203(a)'s limitation on a State's accountability for interest earned on federal grant funds pending their disbursement for program purposes did not apply in this context, and affirmed the Regional Director's decision. See Pet. App. 6a, 30a. The DAB concluded that the self-insurance reserve accounts did not represent grant money that was "pending * * * disbursement" within the meaning of Section 203(a), in part because the funds amounted to contingency funds that would be tapped only in the event claims were filed and paid. Pet. App. 6a. The DAB explained: "Unlike other accounts for benefits

[1] Section 203(a) then read:

> Consistent with program purposes and regulations of the Secretary of the Treasury, the head of an executive agency carrying out a grant program shall schedule the transfer of grant money to minimize the time elapsing between transfer of the money from the Treasury and the disbursement by a State, whether disbursement occurs before or after the transfer. A State is not accountable for interest earned on grant money pending its disbursement for program purposes.

As explained below (see page 9, *infra*), Section 203 has since been amended in a manner that resolves the question presented here for periods after October 24, 1990.

to be paid under federally assisted programs such as Medicaid and Aid to Families with Dependent Children (AFDC), the self-insurance accounts maintained fund balances from year to year." DAB Decision 1234, at 10-11 (C.A. App. 16-17). The DAB suggested in the alternative that the interest was not used for program purposes, but was diverted for other non-program purposes. DAB Decision 1234, at 11 (C.A. App. 17).

3. Pennsylvania's Office of the Budget brought this suit in the United States District Court for the Middle District of Pennsylvania seeking declaratory and injunctive relief with respect to the DAB decision. Pet. App. 27a. The district court granted summary judgment in favor of petitioner. In the district court's view, the DAB had strayed impermissibly from the statutory language by, in effect, inserting into the statute an additional prerequisite for a State to avoid accountability for interest—that funds be held "pending *immediate* disbursement." *Id.* at 34a.

4. The court of appeals reversed. Pet. App. 3a-24a. It agreed with petitioner that "[w]hen statutory language is unambiguous, we must of course heed it." *Id.* at 9a. However, it held that Section 203(a) of the ICA did not unambiguously answer the question whether the monies placed in self-insurance reserve accounts were held "pending . . . disbursement [of federal grant money] for program purposes." Pet. App. 9a (quoting Section 203(a) (brackets added by court of appeals)).

The court of appeals found the district court's view in conflict with the first sentence of ICA Section 203(a), which required HHS "to minimize the time

elapsing between the transfer of the money from the Treasury and the disbursement by a State." Pet. App. 10a. The court pointed out that the district court's interpretation might imply that the federal government could not lawfully approve of or contribute to the establishment of cost-saving self-insurance reserve accounts for state employees administering federal programs, because such funds are held in the accounts for extensive periods of time. *Ibid.* In apparent recognition of that difficulty, petitioner offered an alternative interpretation of Section 203(a) in this setting—that the monies had already been "disbursed" when placed into the reserve accounts. Pet. App. 10a. By presenting these alternative arguments, petitioner "proffer[ed] two entirely different but nevertheless plausible interpretations." *Id.* at 9a.

Concluding that the statute was therefore ambiguous, the court of appeals then turned to conventional techniques of statutory construction. It examined the legislative history, the purposes of the statutory provision, and the context of the second sentence of Section 203(a) in conjunction with its first sentence. The court explained that Congress enacted the statute in 1968 in reaction to Comptroller General decisions holding that interest earned on funds advanced to the States under cooperative grant-in-aid programs belonged to the United States; subsequent accounting for that interest had generated management difficulties for the States that Congress sought to minimize. Pet. App. 10a-11a, citing H.R. Rep. No. 1845, 90th Cong., 2d Sess. 9 (1968). "Section 203(a) was meant to eliminate this burden while at the same time preventing the states from obtaining a windfall

by holding federal funds for lengthy periods and earning substantial amounts of interest prior to disbursement." *Id.* at 11a. The court of appeals concluded that the statutory reference to money held by a State "pending its disbursement for program purposes"—for which the State is not obliged to account for interest earned—was "not intended to refer to the long-term holding of federal funds in reserve accounts." *Id.* at 12a.

Judge Becker dissented. Pet. App. 17a-24a. In his view, the language of Section 203(a) was clear, and in this case "the federal funds were [held] pending disbursement after being deposited in the Commonwealth's self-insurance reserves and prior to being used to satisfy insurance claims." Pet. App. 23a.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further, not only is the ruling below interlocutory, but Congress has amended the statutory provision at issue, thereby rendering the issue of no continuing importance. Review by this Court therefore is not warranted.

1. Contrary to petitioner's assertion (Pet. 4-8), this case presents no issue regarding the obligation of courts to give effect to the plain language of a federal statute. Nothing in the court of appeals' decision questions that basic tenet of statutory construction. "When statutory language is unambiguous," the court below acknowledged, "we must of course heed it." Pet. App. 9a.

The court of appeals' decision instead rests on its determination that the application of the former Section 203(a) to funds held by a State in self-

insurance reserve accounts presented various ambiguities. Although Section 203(a) embodied two provisions that operated in tandem, those provisions did not resolve how Section 203(a) applies to funds held in reserves. Because the first sentence directed HHS to minimize the time between federal distribution of funds and ultimate disbursement through state-run programs, its import was that HHS could not allow federal funds to be held in a reserve account indefinitely while a State accrued interest on the funds. The second sentence limited the statute's no-interest provision to money "pending * * * disbursement for program purposes." 31 U.S.C. 6503(a). Neither sentence alone, nor both taken together, spoke directly to arrangements under which a State intends to and does hold funds obtained from the federal government for an indefinite period of time in separate accounts. Even petitioner has been forced to resort to multiple explanations as to how the statute might apply to such accounts.

In these circumstances, the court of appeals followed the well-established rule that all of the terms of relevant statutory provisions must be taken into account. *E.g.*, *United States* v. *Menasche*, 348 U.S. 528, 538-539 (1955); *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979). Notably, the second sentence of ICA Section 203(a) did not provide that "a State is not accountable for interest" (*cf.* Pet. 13); Congress did not adopt a blanket prohibition against holding a State accountable for interest in every conceivable circumstance arising under a federal grant program. Instead, Congress excused a State from accounting for "interest earned on grant money" only if the money was held "*pending its disbursement for*

program purposes." 31 U.S.C. 6503(a) (1988) (emphasis added). In this case, the court of appeals correctly held that funds held indefinitely in reserve accounts that earn interest paid into the State's general treasury did not represent money held "pending * * * disbursement for [federal] program purposes."

After examining the operative statutory language in concert with the previous sentence of the same Section of the ICA, the court then turned to the legislative history. That history showed that Congress in 1968 established a new system for minimizing the time between disbursements of funds from the United States Treasury and State expenditures of those funds, a system that would permit States not to account for interest during the brief interim period during which funds were passed through directly to program purposes. As the court of appeals held, interest-earning monies kept in self-insurance reserve accounts for an indefinite period of time were simply not a part of the new scheme established by Section 203(a).[2]

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[2] As petitioner points out (Pet. 14-15), Section 203(a) was adopted from the Senate bill and was included in the ICA over the government's objection. But petitioner errs in elevating that point to a studied interpretation of the statute on the narrow question presented here. Nothing in the court of appeals' decision undermines the normal operation of the second sentence of Section 203(a) (to excuse the State from liability for interest) when funds are disbursed to a State under arrangements contemplating their prompt use directly for program purposes, as distinguished from placing the funds in separate reserve accounts. In any event, "[p]assing references and isolated phrases are not controlling when analyzing a legislative history." *United States Dep't of State* v. *Washington Post Co.*, 456 U.S. 595, 600 (1982).

2. The decision below presents no issue warranting review by this Court. There is no circuit conflict on the legal issue presented. Moreover, the case is in an interlocutory posture. As the court of appeals noted, petitioner maintains that the Commonwealth did not actually earn any interest on the self-insurance accounts in question, and the court of appeals remanded the case for further proceedings on that issue. Pet. App. 16a. Although HHS has challenged petitioner's contention on this point, if it is resolved in petitioner's favor, there may be no occasion to reach the question of statutory interpretation petitioner raises in this Court.

Finally, the legal issue petitioner raises is of no continuing importance. In the Cash Management Improvement Act of 1990, Congress amended the very language of Section 203(a) on which petitioner relies. See Pub. L. No. 101-453, § 5(b), 104 Stat. 1059. As amended, 31 U.S.C. 6503(a) (Supp. III 1991) now requires the States, as well as federal agencies, to minimize the time between transfers of funds to the States and disbursements of funds by the States. Significantly, the new Section 6503(c) also requires a State to pay interest on federal monies held prior to the State's expenditures. This requirement became effective October 24, 1990. Pub. L. No. 101-453, § 5(e), 104 Stat. 1061-1062. Disputes over interest earned on state-operated self-insurance reserve accounts cannot arise under the new statute.

Nor does sufficient concern arise regarding possible pre-amendment practices of other States to warrant certiorari. Although respondent asserts that approximately one-half of the States have established self-insurance reserves (see Pet. 4, 16), it does not

follow that those States have a dispute with the federal government regarding accountability for interest earned on the self-insurance reserve accounts. It is not clear how many States have failed to credit those accounts with interest they have earned. As of this writing, we know of no other cases pending in any court raising the issue addressed by the court below, and only Alabama is presently raising the issue in an administrative proceeding. See Amicus Br. 1. There is, in short, no reason for intervention by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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